

## CHAPTER 448

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**CORRECTIONS**


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**HOUSE BILL 21-1209**

BY REPRESENTATIVE(S) Gonzales-Gutierrez and Daugherty, Amabile, Benavidez, Boesenecker, Esgar, Hooton, Kennedy, Kipp, Michaelson Jenet, Ricks, Cutter, Jackson, Jodeh, McCluskie;  
also SENATOR(S) Lee, Buckner, Gonzales, Moreno.

**AN ACT**

**CONCERNING OFFENDERS WHO COMMITTED AN OFFENSE WHEN UNDER TWENTY-ONE YEARS OF AGE, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Session Laws of Colorado 2016, **amend** section 1 of chapter 352 as follows:

Section 1. **Legislative declaration.** (1) The general assembly finds and declares that:

(a) The United States supreme court has held in several recent decisions regarding the criminal sentencing of juveniles that children are constitutionally different than adults for purposes of sentencing and should be given a meaningful opportunity for release based on demonstrated maturity and rehabilitation;

(a.5) MORE RECENT RESEARCH ABOUT BRAIN DEVELOPMENT DEMONSTRATES THAT THE BRAIN FUNCTIONING THAT GUIDES AND AIDS RATIONAL DECISION-MAKING DOES NOT FULLY DEVELOP UNTIL A PERSON IS IN HIS OR HER MID- TO LATE TWENTIES, WHICH INDICATES THAT A YOUNG ADULT DOES NOT OFTEN POSSESS THE DEVELOPMENTAL MATURITY AND DECISION-MAKING SKILLS OF A MATURE ADULT;

(b) Colorado recognizes that ~~children~~ PERSONS have not yet reached developmental maturity before the age of ~~eighteen~~ TWENTY-ONE years and therefore have a heightened capacity to change behavior and a greater potential for rehabilitation;

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

(c) Colorado has many offenders currently serving sentences in the department of corrections who committed crimes when they were less than ~~eighteen~~ TWENTY-ONE years old and who no longer present a threat to public safety; and

(d) Colorado is committed to research-based best practices in the development and implementation of correctional policies and practices. BEST PRACTICES SUPPORT THE RELEASE OF OFFENDERS WHO NO LONGER PRESENT A THREAT TO THE SAFETY OF OTHER PERSONS OR THE COMMUNITY AND WHO HAVE DEMONSTRATED THAT THROUGH OBSERVABLE AND VERIFIED POSITIVE BEHAVIOR. RECONSIDERING OFFENDERS' SENTENCES AFTER LENGTHY INCARCERATION CREATES HOPE FOR AND HELPS DEVELOP MATURITY AND RESPONSIBILITY IN OFFENDERS WHO WERE JUVENILES OR YOUNG ADULTS WHEN THEIR CRIMES WERE COMMITTED; AND

(e) COLORADO IS COMMITTED TO PROVIDING VICTIMS THE OPPORTUNITY TO BE ADVISED AND HEARD REGARDING THE RELEASE OF OFFENDERS WHO HAVE COMMITTED SERIOUS CRIMES AS WELL AS THE OPPORTUNITY TO ENGAGE IN RESTORATIVE JUSTICE PRACTICES UPON REQUEST OF A VICTIM OR VICTIM'S IMMEDIATE FAMILY.

(2) Now, therefore, Colorado THE GENERAL ASSEMBLY desires to implement a system that allows any offender who committed a serious crime as a juvenile, was treated as an adult by the criminal justice system, and has served more than twenty or twenty-five calendar years of a sentence to the department of corrections, during which he or she has exhibited growth and rehabilitation, OR WHO AS A YOUNG ADULT UNDER TWENTY-ONE YEARS OF AGE WHO COMMITTED A SERIOUS CRIME AND HAS SERVED MORE THAN TWENTY OR THIRTY CALENDAR YEARS IF SENTENCED TO THE DEPARTMENT OF CORRECTIONS, AND WHILE SERVING THE SENTENCE TO THE DEPARTMENT OF CORRECTIONS HAS EXHIBITED GROWTH AND REHABILITATION, the opportunity to further demonstrate rehabilitation and earn early release in a specialized program in a less secure setting without compromising public safety.

**SECTION 2.** In Colorado Revised Statutes, 17-34-101, **amend** (1)(a) introductory portion, (1)(a)(I) introductory portion, (1)(a)(I)(B), (1)(a)(I)(C), and (2) introductory portion; and **add** (1)(a)(IV) as follows:

**17-34-101. Juveniles and young adults who are convicted as adults in district court and young adults convicted under twenty-one years of age - eligibility for specialized program placement - petitions.** (1) (a) Notwithstanding any other provision of law, an offender serving a sentence in the department for a felony offense as a result of the filing of criminal charges by an information or indictment pursuant to section 19-2-517, or the transfer of proceedings to the district court pursuant to section 19-2-518, or pursuant to either of these sections as they existed prior to their repeal and reenactment, with amendments, by House Bill 96-1005, OR A YOUNG ADULT OFFENDER SERVING A SENTENCE IN THE DEPARTMENT FOR A FELONY OFFENSE THAT WAS COMMITTED WHEN THE OFFENDER WAS UNDER TWENTY-ONE YEARS OF AGE AND THAT SENTENCE IS NOT A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE, and ~~who~~ THE OFFENDER IN ANY OF THESE CASES remains in the custody of the department for that felony offense, may petition for placement in the specialized program described in section 17-34-102, referred to within this section as the "specialized program", as follows:

(I) EXCEPT AS PROVIDED IN SUBSECTION (1)(a)(IV) OF THIS SECTION, if the felony of which the person was convicted was not murder in the first degree, as described in section 18-3-102, then the offender may petition for placement in the specialized program after serving twenty years of his or her sentence if he or she:

(B) Has not been convicted of AN OFFENSE OF unlawful sexual behavior, as defined in section 16-22-102 (9), ~~C.R.S.~~ OR AN OFFENSE THAT THE UNDERLYING FACTUAL BASIS IS UNLAWFUL SEXUAL BEHAVIOR, AS DEFINED IN SECTION 16-22-102 (9), OR AN OFFENSE IN WHICH THE UNDERLYING FACTS SUPPORT THE FACT THAT THE OFFENDER COMMITTED, PARTICIPATED IN, OR AIDED OR ABETTED IN THE COMMISSION OF A SEXUAL OFFENSE EVEN IF THE OFFENDER WAS NOT CONVICTED OF A SEXUAL OFFENSE;

(C) Is not OR HAS NOT BEEN PREVIOUSLY PLACED in a treatment program within the department for a serious behavioral or mental health disorder;

(IV) IF THE FELONY THE PERSON WAS CHARGED WITH WAS MURDER IN THE FIRST DEGREE, AS DESCRIBED IN SECTION 18-3-102, WITH THE POSSIBLE PENALTY OF LIFE WITHOUT THE POSSIBILITY OF PAROLE, AND THE PERSON WAS EIGHTEEN YEARS OF AGE OR OLDER BUT LESS THAN TWENTY-ONE YEARS OF AGE AT THE TIME OF THE COMMISSION OF THE OFFENSE, AND THE PERSON ENTERED A PLEA OF GUILTY TO A LESSER FELONY OFFENSE AND RECEIVED A DETERMINATE SENTENCE TO THE DEPARTMENT WITH THE POSSIBILITY OF PAROLE, THEN THE OFFENDER MAY ONLY PETITION FOR PLACEMENT IN THE SPECIALIZED PROGRAM AFTER SERVING THIRTY CALENDAR YEARS OF HIS OR HER SENTENCE AND THE OFFENDER MAY ONLY BE RELEASED ON EARLY PAROLE PURSUANT TO THE PROVISIONS OF SECTION 17-22.5.403.7(2) AFTER SERVING THIRTY-FIVE CALENDAR YEARS. FOR PURPOSES OF THIS SUBSECTION (1)(a)(IV), "CALENDAR YEAR" MEANS TWELVE CONSECUTIVE MONTHS WITHOUT ANY TIME CREDIT DEDUCTIONS.

(2) Upon receiving a petition from an offender described in subsection (1) of this section, the executive director or ~~his or her~~ THE EXECUTIVE DIRECTOR'S designee shall review the petition and determine whether to place the offender in the specialized program. THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S DESIGNEE SHALL NOT PLACE AN OFFENDER IN THE PROGRAM IF THE DEPARTMENT CLASSIFIED THE OFFENDER AS A SEX OFFENDER PURSUANT TO DEPARTMENT ADMINISTRATIVE REGULATION. In making this determination, the executive director or ~~his or her~~ THE EXECUTIVE DIRECTOR'S designee shall consider the following criteria:

**SECTION 3.** In Colorado Revised Statutes, 17-34-102, **amend** (1), (4), (8)(a) introductory portion, and (8)(b); and **add** (8)(c) and (8)(d) as follows:

**17-34-102. Specialized program for juveniles and young adults convicted as adults and young adults convicted under twenty-one years of age - report.**

(1) The department shall develop and implement a specialized program for offenders who have been sentenced to an adult prison for a felony offense committed while the offender was ~~less than~~ UNDER eighteen years of age as a result of the filing of criminal charges by an information or indictment pursuant to section 19-2-517, ~~C.R.S.~~, or the transfer of proceedings to the district court pursuant to section 19-2-518, ~~C.R.S.~~, or pursuant to either of these sections as they existed prior

to their repeal and reenactment, with amendments, by House Bill 96-1005, OR OFFENDERS SERVING A SENTENCE IN THE DEPARTMENT FOR A FELONY OFFENSE THAT WAS COMMITTED WHEN THE OFFENDER WAS UNDER TWENTY-ONE YEARS OF AGE, and ~~who~~ THE OFFENDERS IN ANY OF THESE CASES are determined to be appropriate for placement in the specialized program. The department shall implement the specialized program within or in conjunction with a facility operated by, or under contract with, the department.

(4) The department ~~may~~ SHALL make restorative justice practices, as defined in section 18-1-901 (3)(o.5), ~~C.R.S.~~, available to any victim of any offender who petitions for placement in the specialized program, as may be appropriate, but only if requested by the victim and the victim has registered with the department of corrections requesting notice of victims' rights pursuant to the provisions of part 3 of article 4.1 of title 24. ~~C.R.S.~~

(8) (a) Except as described in ~~paragraph (b) of this subsection (8)~~ SUBSECTION (8)(b) AND (8)(c) OF THIS SECTION, if an offender has served at least twenty-five calendar years of his or her sentence and successfully completed the specialized program, unless rebutted by relevant evidence, it is presumed that:

(b) If an offender who committed murder in the first degree, as described in section 18-3-102 (1)(a), (1)(c), (1)(e), or (1)(f), ~~C.R.S.~~, has served thirty years of his or her sentence and successfully completed the program, unless rebutted by relevant evidence, the presumptions described in ~~subparagraphs (I) and (II) of paragraph (a) of this subsection (8)~~ SUBSECTIONS (8)(a)(I) AND (8)(a)(II) OF THIS SECTION apply.

(c) IF THE FELONY THE PERSON WAS CHARGED WITH WAS MURDER IN THE FIRST DEGREE, AS DESCRIBED IN SECTION 18-3-102, WITH THE POSSIBLE PENALTY OF LIFE WITHOUT THE POSSIBILITY OF PAROLE, AND THE PERSON WAS EIGHTEEN YEARS OF AGE OR OLDER BUT LESS THAN TWENTY-ONE YEARS OF AGE AT THE TIME OF THE COMMISSION OF THE OFFENSE, AND THE PERSON ENTERED A PLEA OF GUILTY TO A LESSER FELONY OFFENSE AND RECEIVED A DETERMINATE SENTENCE TO THE DEPARTMENT WITH THE POSSIBILITY OF PAROLE, AND THE OFFENDER HAS SERVED THIRTY-FIVE CALENDAR YEARS OF HIS OR HER SENTENCE AND SUCCESSFULLY COMPLETED THE PROGRAM, UNLESS REBUTTED BY RELEVANT EVIDENCE, THE PRESUMPTIONS DESCRIBED IN SUBSECTIONS (8)(a)(I) AND (8)(a)(II) OF THIS SECTION APPLY.

(d) FOR PURPOSES OF THIS SUBSECTION (8), "CALENDAR YEAR" MEANS TWELVE CONSECUTIVE MONTHS WITHOUT ANY TIME CREDIT DEDUCTIONS.

**SECTION 4.** In Colorado Revised Statutes, 17-22.5-403.7, **amend** (1)(a) and (2) as follows:

**17-22.5-403.7. Parole eligibility - youthful offender - juvenile offender convicted as adult - definition.** (1) As used in this section, "inmate" means a person:

(a) (I) Who is convicted as an adult of a ~~class 1~~ felony following direct filing of an information or indictment in the district court pursuant to section 19-2-517; ~~C.R.S.; or~~

(II) Who is convicted as an adult of a ~~class 1~~ felony following transfer of proceedings to the district court pursuant to section 19-2-518; ~~C.R.S.~~; and OR

(III) WHO IS CONVICTED AS AN ADULT OF A FELONY OFFENSE AND SENTENCED TO THE DEPARTMENT WHEN THE OFFENSE FOR WHICH THE PERSON CONVICTED WAS COMMITTED WHEN THE PERSON WAS EIGHTEEN YEARS OF AGE OR OLDER BUT LESS THAN TWENTY-ONE YEARS OF AGE; AND

(2) After considering any relevant evidence presented by any person or agency and considering the presumptions set forth in section 17-34-102 (8), the governor may grant parole to an inmate prior to the inmate's parole eligibility date if, in the governor's opinion, extraordinary mitigating circumstances exist and the inmate's release from institutional custody is compatible with the safety and welfare of society. HOWEVER, NOTHING IN THIS SECTION GRANTS THE GOVERNOR THE AUTHORITY TO GRANT EARLY PAROLE PURSUANT TO THE PROVISIONS OF THIS SECTION TO AN INMATE SERVING A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE.

**SECTION 5.** In Colorado Revised Statutes, 18-1.3-404, **add** (2.5) as follows:

**18-1.3-404. Duration of sentences for felonies.** (2.5) IF A COURT SENTENCES A DEFENDANT TO THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS AND THE DEFENDANT WAS UNDER TWENTY-ONE YEARS OF AGE WHEN THE OFFENSE WAS COMMITTED, THE COURT SHALL MAKE A STATEMENT THAT THERE IS THE POSSIBILITY OF THE DEFENDANT BEING ELIGIBLE TO SERVE A PORTION OF THE DEFENDANT'S SENTENCE IN THE DEPARTMENT OF CORRECTIONS SPECIALIZED PROGRAM CREATED PURSUANT TO SECTION 17-34-102.

**SECTION 6. Appropriation.** (1) For the 2021-22 state fiscal year, \$118,976 is appropriated to the department of corrections for use by institutions. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) \$101,466 for personal services related to the youthful offender system subprogram, which amount is based on an assumption that the department will require an additional 1.4 FTE; and

(b) \$17,510 for operating expenses related to the youthful offender system subprogram.

**SECTION 7. Act subject to petition - effective date.** This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: July 6, 2021